IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 471 OF 2006
IN
ARBITRATION PETITION NO. 243 OF 2005

M/s. Rotomac Electricals Pvt.Ltd. .. Appellants.

V/s.

Controller of Stores .. Respondents.

Mr.S.U.Kamdar with Mr. Ramprakash Pandey i/by Mr. Uday Shankar Samudrala for the Appellants.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 18TH AUGUST, 2006.

P.C.:

. Heard Mr. S.U. Kamdar for the Appellants.

2. In so far as the finding recorded by the learned single Judge, relating to claim of Rs.1,40,000/- for remanufacture of two sets coils is concerned, the learned single Judge has held that there is no evidence to support the said claim and the Arbitrator was not justified in awarding the said claim.

3. We considered claim No.5, which, interalia, mentions the claim of Rs. 1,40,000/- for remanufacture

of two sets coils damaged by the inspection team wrongfully. We asked the counsel for the appellants to show us any evidence led by the claimants, regarding the damage of two sets coils by the inspection team wrongfully. The counsel submitted that there is no evidence to that effect. He would submit that the evidence was not led because there was no denial. We find no merit in the submission. Firstly, in the reply, the respondents have not admitted the said claim. Secondly, looking to the nature of the claim, the burden lay on the claimants to establish that the two sets coils got damaged by the inspection team wrongfully and that necessitated remanufacture of the two sets coils. There being no evidence to that effect, the learned single Judge cannot be said to have erred in setting aside the claim of Rs. 1,40,000/- that was awarded by the Arbitrator without any evidence.

4. As regards the refund of amount of liquidated damages by the Arbitrator, the learned single Judge found no justification for the said award, particularly in view of the fact that even it was not the case of the appellants herein that no loss was suffered by the present respondents.

5. The counsel for the appellants submitted that

liquidated damages are provided under clause 702 and not under clause 800. The learned single Judge considered both the clauses and held that if extension of time is granted and supply is completed within the extended time, it cannot be said that no damages can be levied. There is nothing wrong in the consideration of the matter by the learned single Judge.

6. We thus find no justification to interfere with the impugned order.

7. Appeal is dismissed in limine.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)

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